Supreme Court of the United States

OCTOBER TERM, 1953

No. , Original

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,

v.

STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS; STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

BRIEF FOR COMPLAINANT.

WILLIAM E. POWERS,
Attorney General of Rhode Island,
THOMAS G. CONCORAN,
Attorneys for Complainant.

CONCORAN, YOUNGMAN & ROWE,
Of Counsel.

December 21, 1953.

INDEX

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JURISDICTION.

This is an action by the State of Rhode Island against the State of Louisiana, the State of Florida, the State of Texas and the State of California, and George M. Humphrey, a citizen of the State of Ohio, Douglas McKay, a citizen of the State of Oregon, Robert B. Anderson, a citizen of the State of Texas, and Ivy Baker Priest, a citizen of the State of Utah. The jurisdiction of this Court is invoked under authority of Article III, Section 2, Clauses 1 and 2 of the United States Constitution and 28 U. S. C. 1251.

QUESTIONS PRESENTED.

1. In view of the holdings of this Court in *United States* v. *California*, 332 U. S. 19 (1947) and the related *Louisiana* and *Texas* cases, to the effect that the resources that lie beneath the sea off the coasts of the United States do not constitute "property", either of the Federal Government or of the adjoining states, did Congress, in enacting Public Law 31, 83d Congress, 1st Session, c. 65, exceed its Constitutional powers in purporting to convey to the adjoining states the "property" rights of the Federal Government with respect to these resources?

2. In view of the holdings of this Court that the Federal Government has "paramount rights" with respect to these resources, and in view of its holdings that these Federal "paramount rights" derive from the sovereignty of the United States and from the Constitutional duty of Congress "to provide for the common defense", is the nature of the Federal Government's interest in these off-shore areas a completely non-delegable Federal *responsibility*, rather than a "property" right to which the "property clause" of the Constitution (Art. IV, Sec. 3, cl. 2) can be applied?

3. Aside from the inapplicability of the "property clause" of the Constitution, is Public Law 31 an invalid assertion of Constitutional power, since it is not a proper exercise of the trust under which the United States holds its interest in these lands and resources under the Constitution?

4. Is Public Law 31, which attempts to give to the defendant states the royalties from the development of mineral and other resources in these areas, which royalties accrued *after* this Court had held that such resources were subject to jurisdiction and control of the United States and appertain to it because of its sovereignty, a valid exercise of said trust?

5. Is Public Law 31, which purports to authorize assertions by the defendant states of ownership, dominion and power and exclusive jurisdiction and control of the lands, minerals, marine animal and plant life and other resources lying seaward of the ordinary low water mark on the coasts of the defendant states, a violation of the Constitutional guaranty to Rhode Island to be treated on an equal footing with the defendant states?

6. In view of the long accepted rule of international law and the historic position of the Federal Government with respect to the coastal waters and the land and its contents underlying the same, that the paramount rights therein and power over such waters and land to the territorial limits of the United States belong to the United States, should Public Law 31 be construed to authorize the assertions of Louisiana, Florida and Texas that their territories include a belt of territorial waters nine nautical miles in width?

7. If so construed, are the purported authorizations of Public Law 31 to such territorial claims by Louisiana, Florida and Texas, a violation of the Constitutional guaranty to Rhode Island to be treated on an equal footing with Louisiana, Texas and Florida?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

Article IV, Section 3, of the Constitution of the United States provides:

> "New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.
>
> "The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the

United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

Public Law 31, 83d Congress, 1st Session, c. 65, known as the Submerged Lands Act, is set out in full in Appendix A to this brief, pages 38-44, *infra*.

The relevant portions of the Joint Resolution admitting Texas (Joint Resolution No. 8 of March 1, 1845, 5 Stat. 797), and of the Acts of Congress admitting Louisiana (Act of April 8, 1812, c. 50, 2 Stat. 701), Florida (Act of March 3, 1845, c. 48, 5 Stat. 742), and California (Act of Sept. 9, 1850, c. 50, 9 Stat. 452) are set forth in Appendix A to this brief, pp. 45-46, *infra*.

The legislative acts setting forth the boundary claims of Louisiana (6 Dart. La. Gen. Stat. (1939), Secs. 9311.1-9311.4, 49 La. Rev. Stat. (1950), Secs. 1 and 2), Texas (Act of May 16, 1941, L. Texas, 47th Leg., p. 454, as amended by Act of May 23, 1947, L. Texas, 50th Leg., p. 451, Vernon's Ann. Civ. Stat. Art. 5415a), and the constitutional provision setting forth the boundary claims of Florida (Fla. Const. Art. 1, 1868) are set forth in Appendix A to this brief, pp. 46-49, *infra*.

STATEMENT.

This action is by Rhode Island against the States of Louisiana, Florida, Texas and California and against George M. Humphrey, acting under color of authority as Secretary of the Treasury, Douglas McKay, acting under color of authority as Secretary of the Interior, Robert B. Anderson, acting under color of authority as Secretary of the Navy, and Ivy Baker Priest, acting under color of authority as Treasurer of the United States.

In *United States* v. *California*, 332 U. S. 19 (1947), this Court held that the submerged lands and natural resources lying seaward of the ordinary low water mark off the coast of California were subject to the paramount rights, jurisdiction and control of the Federal Government which

had the right to license the development of these natural resources. In *United States* v. *Louisiana*, 339 U. S. 699 (1950), and *United States* v. *Texas*, 339 U. S. 707 (1950), this Court reached the same decision as to lands off Louisiana and Texas and, in effect, applied its holdings to all coastal areas off the coast of the United States.

Before these decisions the defendant States of Louisiana, Texas, and California had asserted the right to and in some cases had licensed the development of such natural resources and had applied the royalties therefrom to the exclusive benefit of the citizens of their respective States. After the decisions the royalties, amounting approximately to $62 million, derived from such leases, have been impounded or held in escrow.

Public Law 31, which was enacted on May 22, 1953, purports to release to the coastal states all right, title or interest in the subsoil and natural resources (with certain exceptions), of the submerged lands seaward of the low water mark off their coasts, and declares they may develop these resources for their own use. The law also directs the individual defendants to release to the three defendant states of Louisiana, Texas and California, the sum of $62 million now impounded or held in escrow.

The law also defines and attempts to limit the boundaries of the coastal states so that the boundaries of Rhode Island are limited to three geographic miles seaward from the ordinary low water mark off its coasts or from the seaward limit of its inland waters. The three defendant States of Louisiana, Florida and Texas, however, so construe Public Law 31 (and there are indications that Congress so intended) as to claim a belt nine nautical miles in width and the natural resources within that belt. The individual defendants have made it clear they will acquiesce in this claim despite the long standing policy of the United States and the accepted principle of international law that the permissible width of such belt cannot be more than three nautical miles.

Although the law declares it applies equally to all coastal states—except, as already stated, that some of the States bordering the Gulf of Mexico are, in certain circumstances, allowed nine nautical miles—the fact is that its purpose and effect is limited to the only valuable natural resources at present known off the coasts of the United States which are located solely off the coasts of Louisiana, Florida, Texas and California. Therefore, these four defendant states are the only real beneficiaries of the law and are thus placed in a favored category superior to the other coastal states of the Union.

The actions threatened to be taken under color of Public Law 31 by the defendant states and by the individual defendants will cause irreparable injury to Rhode Island and its citizens and its people unless restrained by this Court. Rhode Island and its citizens will lose their equitable interest (held by the Federal Government as their trustee) in the resources of the marginal seas and the royalties heretofore derived and to be derived hereafter from the development of such resources, and will also be deprived of their equitable interest in the sum of $62 million now impounded or in escrow under the control of the individual defendants.[1] Further, the sovereignty of

[1] It is interesting to compare a similar attempt, made at the time the Articles of Confederation were in effect. It had been proposed that navigation rights on the Mississippi be granted to Spain. This attempt was defeated, on the merits. In addition, it was the contention of the opponents of the attempt that the Congress (both under the Articles of Confederation and under the Constitution) lacked power to effect such a grant. James Madison, the Father of the Constitution, speaking at the Virginia Convention of 1788 (called for the purpose of ratifying or rejecting the Constitution), discussed the proposed disposition in these words:

> "I readily confess that neither the old confederation, nor the new Constitution, involves a right to give the navigation of the Mississippi. It is repugnant to the law of nations. I have always thought and said so. Although the right be denied, there may be emergencies which will make it necessary to make a sacrifice. But there is a material difference between emergencies of safety in time of war, and those which may

Rhode Island as an original State will be reidered inferior to the sovereignty of the four defendant states because of the granting to these states of the natural resources which this Court has already held to be an attribute of sovereignty of the United States. Rhode Island will also have a status of inferior sovereignty since, unlike the three defendant states of Louisiana, Florida, and Texas it is not permitted to extend its territorial boundaries nine nautical miles off the coast, but is limited to a belt three nautical miles in width and to the natural resources thereunder.

Rhode Island thus contends that Public Law 31 is unconstitutional for all of the several reasons stated in detail below and, therefore, asks for injunctive relief against the actions already taken and proposed to be taken by the defendant states and the individual defendants under color of this law.

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relate to mere commercial regulations. You might on solid grounds deny in time of peace, what you give up in time of war."

(Quoted from James Madison's remarks, June, 1788, at the Virginia Convention—Journal of the Virginia Convention of 1788, page 246).

And, speaking on this same occasion with respect to the consideration which Congress had given to the proposed gift, Madison said

> "New Jersey . . . gave instructions to her delegates to oppose it. And what was the ground of this? I do not know the extent and particular reasons of her instructions. But I recollect, that a material consideration was, that *the cession of that river would diminish the value of the western country, which was a common fund for the United States*, and would consequently tend to impoverish their public treasury. These, Sir, were rational grounds." (Emphasis added). (*Ibid.*, p. 247).

For a detailed review of the statements on this subject made by John Marshall, Governor Randolph, and others, at the Virginia Convention of 1788, see Appendix C, to this brief, pp. 53-64, *infra*

SUMMARY OF ARGUMENT.

I.

Rhode Island Has Standing To Sue.

Rhode Island here sues as quasi-sovereign or *parens patriae* for its citizens and also as a sovereign state. As quasi-sovereign Rhode Island is suing to protect the economic welfare of its citizens, a large number of whom are employed in the New England fishing industry, particularly that part which fishes off the Grand Banks of Canada and within nine nautical miles of the low water mark of the shores of New Brunswick, Newfoundland and Nova Scotia. This industry has been and is engaged in a fierce competitive struggle with the Canadian fishing industry. Treaties now exist between Great Britain and the United States which recognize the three mile territorial limit. Three of the defendant states, Louisiana, Florida and Texas, acting under color of Public Law 31, threaten to assert ownership of the natural resources beyond the three mile limit, and such assertions, unless prevented by this Court, will seriously and adversely affect the fishing rights of the New England fishing industry off Canada.

Rhode Island also asserts beneficial interests in the lands, resources and revenues therefrom beyond the low water mark of the coasts or beyond the seaward limits of the inland waters of the defendant states. These lands and resources are held in trust for the benefit of the citizens of the United States, including the citizens and people of Rhode Island.

As sovereign Rhode Island brings this action to protect its interest in these natural resources. To deprive Rhode Island of its fair share of these resources denies to it sovereignty equal to that of the defendant states. Rhode Island must be treated on an equal footing with the defendant states of Louisiana, Florida and Texas with respect to the width of the belt of territorial waters off her shores. These three defendant states here threaten to attempt to extend their jurisdiction to the high seas.

II.

Public Law 31 is invalid since Congress has no power whatever to dispose of the Federal Government's "paramount rights" with respect to these resources, since the "paramount rights" of the Federal Government do not constitute "property" within the meaning of Article IV, Section 3, Clause 2 of the Constitution, but constitute instead one attribute of a non-delegable responsibility of national sovereignty—namely, the responsibility of the Federal Government to provide for the common defense and to conduct foreign relations.

In *United States* v. *California*, 332 U. S. 19, this Court declined to rule that either the Federal Government or California held these resources as "property rights", but instead held that the United States had "paramount rights" over the marginal lands and resources because of the responsibility of the Federal Government to provide for the common defense and conduct foreign relations. Article IV, Section 3, Clause 2 of the Constitution provides that "The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the territory *or other property* belonging to the United States." Because of the nature of the Federal "paramount rights" there is no "Federal property" to be disposed of in the sense the framers of the Constitution meant when they gave to the Congress the right to dispose of Federal property. Congress cannot, therefore, divest the Government of its "paramount rights" in these resources because their nature is not that of "property" but is a responsibility which cannot be delegated.

The debates of the Constitutional Convention of 1787 show that the framers intended to give the Federal Government the power to dispose of the Northwest Territory and such other similar "property" in the traditional sense of that term as the United States might acquire. The entire constitutional history of Article IV, Section 3, Clause 2, as reflected in the Convention and in the subsequent debates of the Virginia Convention on ratification indicate that the framers of the Constitution did not contemplate giving to

Congress the power to dispose of such resources as these marginal lands.

III.

Aside from the basic inapplicability of the "property clause" of the Constitution. Public Law 31 is an unconstitutional exercise of the power of Congress to dispose of public lands.

The submerged lands and natural resources here in controversy do not and have never belonged to the defendant states. *United States* v. *California*, 332 U. S. 19 (1947); *United States* v. *Louisiana*, 339 U. S. 699 (1950), and *United States* v. *Texas*, 339 U. S. 707 (1950). In holding the paramount rights and dominion over these resources the United States must act in its constitutional capacity as trustee for all the people and not just for those who happen to be resident in the four defendant states. Public Law 31 is not an exercise by Congress of its judgment as a trustee but, as its legislative history shows, is merely a Congressional attempt to reverse the three decisions cited above of this Court. As such, it is a legislative invasion of the judicial power.

IV.

Public Law 31 is unconstitutional in its denial to the State of Rhode Island of its right to be treated on an equal footing with the defendant states.

The defendant states were admitted into the Union on an equal footing with the thirteen original states, of which Rhode Island is one. Rhode Island is not being accorded equal footing, which is guaranteed by the Constitution, because the equality accorded coastal states by Public Law 31 is purely theoretical. The known valuable interests in the submerged lands are, factually, only off the coasts of the defendant states. Also Public Law 31 violates the equal footing clause by allowing Louisiana, Florida and Texas to include a territorial belt off their coasts nine nautical miles in width while limiting Rhode Island to three miles. Such claims under color of Public Law 31 will, unless re-

strained by this Court, inevitably invite retaliation by the Dominion of Canada against the New England fishing industry, in which many citizens of Rhode Island are employed.

V.

The suit of Rhode Island is not a suit against the United States.

The individual defendants, acting as public officials under color of Public Law 31, are acting in excess of their statutory authority and thus may be enjoined. In attempting to enforce an unconstitutional statute they may also be enjoined. Their actions in either situation are not the acts of the sovereign.

ARGUMENT.

I.

The State of Rhode Island Has Standing To Sue.

This original action is brought by Rhode Island, pursuant to Article III, Sections 1 and 2, of the Constitution and 28 U. S. C. § 1251. Rhode Island brings this action as a quasi-sovereign or *parens patriae* for its citizens. Also, in its capacity as a sovereign state, Rhode Island asserts that a controversy exists which is justiciable under the Constitution.

As quasi-sovereign and *parens patriae* for its citizens, Rhode Island claims an equitable interest in the lands and resources and all revenues to be derived therefrom in the submerged lands off the shores of the four defendant states. As one of the forty-eight States it claims also an equitable interest in some part of the sum of $62 million now in escrow or impounded under the control of the individual defendants. A large number of its citizens are engaged in the New England fishing industry, which industry now sails the international waters belonging to the family of nations lying outside of the three mile belt. More particularly, many of these citizens of Rhode Island earn their livelihood in that part of the New England fishing industry

which sails and fishes off the Grand Banks of Canada and within nine nautical miles of the low water mark of the shores of Newfoundland, New Brunswick and Nova Scotia. Should Public Law 31 be construed to allow the three defendant states, Louisiana, Florida and Texas—to extend their belts nine nautical miles into the Gulf of Mexico, these citizens of Rhode Island will be placed in danger of losing their livelihood.

The New England fishing industry, including that conducted by citizens of Rhode Island, has long fiercely competed for its catch with the fishing industry of Canada and Newfoundland. An important part of this catch comes from waters off the coasts of Newfoundland and Labrador. From the incipiency of this industry friction has existed between New Englanders and inhabitants of Newfoundland over fishing rights in these waters.[2]

By the treaty of Oct. 20, 1818 between Britain and the United States American fishermen have the right to fish off the southern coasts of Labrador and Newfoundland, and are excluded "within three marine miles of any of the coasts . . . " elsewhere in Canada.[3]

This implicit recognition of three-mile territorial limits was made explicit by the Treaty of Jan. 23, 1924 between Britain (for the United Kingdom and dominions overseas) and the United States[4] which was binding on Canada as well as Newfoundland.[5]

The rights of American fishermen under the 1818 Treaty have been the subject of long and nearly continuous discord and retaliation between the United States on the one hand

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[2] U. S. Tariff Commission Report No. 152, *Treaties Affecting the Northeastern Fisheries*, chaps. 2, 5, 8, 10.

[3] 1 Malloy, *Treaties*, etc., 631. 1 Hackworth, Digest of International Law, 783.

[4] Treaty Series No. 685, 43 Stat. 1761.

[5] *Joint Interim Report, and Joint Final Report of the Commissioners in the Case of the "I'm Alone,"* dated June 30, 1933, and January 5, 1935, resp., *3 Reports of International Arbitral Awards*, p. 1611. U. N. Pub. 1949 V. 2.

and Newfoundland and Britain on the other,[6] even with mutual agreement on the territorial limits. Now Louisiana, Florida and Texas undertake assertions of sovereignty in the Gulf of Mexico which, if authorized by Public Law 31, must necessarily and inevitably operate as a renunciation of the United States Treaty obligation to recognize the three-mile belt as the limit of territorial waters. There can be, and history indicates that there will be, only one result from this—such assertions will release Canada and Newfoundland from identical obligations on their part, and American fishermen, including citizens of Rhode Island, will be excluded from coastal fisheries they formerly enjoyed. The interest of Rhode Island in preventing large scale renewal of earlier troubles in these northern fisheries can only be protected by bringing this suit.

Rhode Island here appears as trustee, guardian, and representative of its citizens. This Court has long permitted a state to maintain a suit on behalf of its citizens as "quasi-sovereign" and "*parens patriae*" even when the state has itself no direct property interest as owner in the rights it seeks to protect. It has taken jurisdiction of disputes concerning state boundaries;[8] it has allowed a suit by one state to prevent diversion by another state of the flow of an interstate stream;[9] a state can sue to object to the pollution of an interstate stream flowing through its

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[6] U. S. Tariff Commission Report, *supra*; I Hackworth, 783 *et seq.* 5 Hackworth, Digest of International Law, 342-346.

[8] See, *e.g.*, *Virginia* v. *West Virginia*, 11 Wall. 39 (1870); *New Jersey* v. *New York*, 5 Pet. 284 (1830); *Rhode Island* v. *Massachusetts*, 12 Pet. 657 (1838); *Missouri* v. *Iowa*, 7 How. 660 (1849); *Florida* v. *Georgia*, 17 How. 478 (1854); *Alabama* v. *Georgia*, 23 How. 505 (1859); *Missouri* v. *Kentucky*, 11 Wall. 395 (1870); *Louisiana* v. *Mississippi*, 282 U. S. 458 (1931).

[9] *Kansas* v. *Colorado*, 206 U. S. 46 (1907); *Colorado* v. *Kansas*, 320 U. S. 383 (1943); *Connecticut* v. *Massachusetts*, 282 U. S. 660 (1931); *Wyoming* v. *Colorado*, 259 U. S. 419 (1922); *Wisconsin* v. *Illinois*, 278 U. S. 367 (1929).

boundaries.[10] The right of a state to enjoin the enforcement of a statute of another state which promised to cut off a supply of natural gas into the complaining state has been upheld on the ground that the health and comfort of its citizens and industries would be injured. In that case this Court described the complaining state "as the representative of the consuming public."[11] In *Georgia* v. *Pennsylvania Railroad*, 324 U. S. 439 (1945), the complaining state was permitted to bring an original suit to enforce the anti-trust laws on the grounds that the economy of the state and the welfare of its citizens had been injured by a conspiracy of the defendant railroads.

Further, the citizens of Rhode Island would be adversely affected should the sum of $62 million now held in escrow by the individual defendants be turned over to three of the defendant states, Louisiana, Texas and California. Congress must expend these funds subject to the Constitutional trust by which they are held; it cannot discriminate against forty-five of the states and favor the other three. Whatever standard or formula the Congress may see fit to apply, whether based on need or population, or whatever requirements from the several states it may exact, the Congress must apply those standards and requirements fairly and equitably "across the board." Under any such equitable formula Rhode Island and its citizens are entitled to a substantial portion of the $62 million fund.

Similarly Rhode Island and its citizens are entitled to a substantial portion of the vast sums which will accrue in royalties from the future development of the natural resources in these submerged lands. The value of these natural resources is presently estimated as at least $50 billion. By the *California*, *Louisiana* and *Texas* decisions such resources are under the paramount jurisdiction and control of the Federal Government. It has the right to

[10] *Missouri* v. *Illinois*, 180 U. S. 208 (1901); *New York* v. *New Jersey*, 256 U. S. 296 (1921).

[11] *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 591 (1923).

develop such resources and the royalties derived from such development must be devoted to the benefit of all the people of the United States. Unless this Court enjoins the state and individual defendants from taking the actions they are proposing under color of Public Law 31, Rhode Island will be denied any interest whatsoever in these natural resources. This interest is neither ephemeral nor insubstantial. It is true that direct benefits to Rhode Island from such royalties must arise from future Congressional action. But this is true of any benefit to be derived by states and citizens from the Federal Government whether it takes the form of a grant-in-aid or any other form.[12]

It is anticipated that the defendant states and individuals will claim that *Massachusetts* v. *Mellon*, 262 U. S. 447 (1923) controls the case at bar. This Court there held that Massachusetts had no standing to enjoin the Secretary of the Treasury from allocating funds to those states joining the Federal Government in a grant-in-aid program, under the Maternity Act of 1921, to reduce maternal and infant mortality. The *Mellon* case does not apply to Rhode Island's interest as quasi-sovereign. Massachusetts there could have withheld consent to, and thereby prevented, the Federal action involved, so far as Massachusetts was concerned. But under Public Law 31, Rhode Island is given no such choice to consent, or to withhold its consent, that the natural resources, the impounded sum of $62 mil-

[12] Rhode Island's interest in the revenues here is more direct than that of the Secretary of the Interior who, in *United States ex rel. Chapman* v. *Federal Power Commission*, 345 U. S. 153 (1953), was held to have sufficient standing to bring an appeal from a Federal Power Commission order granting a license to a utility to construct a hydro-electric facility at Roanoke Rapids, North Carolina. There, the Secretary's only interest was his statutory duty to act as the marketing agent of surplus power from public hydro-electric projects. He could so act only after the Congress had first authorized the construction of a public project, then appropriated the money for construction, and then only after the completion of the dam.

lion, and what revenues are received from future development should be given to the four defendant states.

The question which Massachusetts presented this Court in *Massachusetts* v. *Mellon* was actually one under the Tenth Amendment. Its contention came down to the claim that Congress had usurped the reserve powers of the states by enacting the Maternity Act of 1921, even though nothing was to be done under that statute without the consent of the states. This Court, therefore, took the view that the question was a political and not a judicial matter.

Massachusetts v. *Mellon* goes no farther than that Massachusetts was not entitled to attack the constitutionality of the statute because the interest it claimed was not in fact endangered. It was expressly noted that this holding was not so general as to say that a state may never sue to protect its citizens against any form of enforcement of unconstitutional Acts of Congress.[13]

Rhode Island and its citizens here have a substantial economic interest which this Court can protect. In the *California* case, that part of these same natural resources which lay off the coast of California was involved. This Court found that the question of who owned or who had paramount rights and power over them was indeed a justiciable controversy. *United States* v. *California*, 332 U. S. 19, 24-25 (1947). This is merely a further step in the same controversy.

The case of *Georgia* v. *Pennsylvania Railroad*, 324 U. S. 439 (1945) here seems to be determinative of Rhode Island's standing as *parens patriae*. There the State of Georgia was given standing to protect the interests of its citizens and the economy of the State even though the anti-trust laws by providing for suits by the Federal Governmen gave the Federal Government the right to protect the interest of the citizens of Georgia.

A state's right to attack the constitutionality of a Federal Statute in appropriate circumstances has been recognized. In *Missouri* v. *Holland*, 252 U. S. 416 (1920), the

[13] 262 U. S. at 485.

State of Missouri was given standing to attack the enforcement of a Congressional act as invading the rights reserved for the States under the Tenth Amendment.[14]

Besides suing as *parens patriae* to protect its economy and the interests of its citizens, Rhode Island here sues as a *sovereign* state to protect its right to be treated on an equal footing with the defendant states.

Rhode Island is one of the thirteen original states. The defendant states were later admitted to the Union with the right to be treated on an equal footing with Rhode Island, the other original states, and all later admitted states.[15] *United States* v. *Texas*, 339 U. S. 707 at 716, held that the equal footing clause applies to these same natural resources here in controversy. In that case this Court found that the very essence of the controversy was the question of sovereignty (339 U. S. at 719):

> "[A]lthough *dominium* and *imperium* are normally separable and separate, this is an instance where property interests are so subordinated to the rights of sovereignty as to follow sovereignty."

Public Law 31 attempts to transfer all interests in the natural resources of these submerged lands to the defendant states. This the defendants propose to do despite Rhode Island's sovereign right to be treated on an equal footing. Such transfer applies not only to all interest to be derived from these resources in the future but also to the sum of $62 million derived in the past from these re-

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[14] Despite the intervening case of *Massachusetts* v. *Mellon*, *Missouri* v. *Holland* was cited with approval in *Hopkins Savings Association* v. *Cleary*, 296 U. S. 315 (1935), where this Court held that a state attempting to protect creditors and investors in state building and loan associations had standing as quasi-sovereign and *parens patriae* to raise the constitutionality of a Federal statute which allowed such building and loan associations to become Federal associations without permission of the state.

[15] *Coyle* v. *Smith*, 221 U. S. 559, 567 (1911); *Skiriotes* v. *Florida*, 313 U. S. 69, 77 (1941); *United States* v. *Texas*, 339 U. S. 707, 716-718 (1950).

sources since the *California*, *Louisiana* and *Texas* cases, and which has been impounded under the control of the individual defendants. The defendant individuals have already made it clear that they will so transfer these funds unless restrained by this Court.

Further, three of the defendant states—Louisiana, Texas and Florida—propose to rely on Public Law 31 to extend their boundaries nine nautical miles into the Gulf of Mexico. Under long settled principles of international law and consistent adherence by the United States to these principles, the boundaries of Rhode Island extend only to the ordinary low water line. Beyond that seaward the predominant right and powers are in the United States. Beyond the ordinary low water mark the state has only certain police powers. Rhode Island, despite its status as an original state, indeed an original maritime state, is in immediate jeopardy of being placed in a position of sovereignty clearly inferior to these three defendant states.

Rhode Island's sovereign right to be treated equally with other states with respect to the width of territorial waters is a justiciable controversy under the Constitution. This Court regards controversies between two or more states as comparable to disputes between sovereigns. Had there been no Union, Rhode Island would have here the kind of right and interest which it would raise directly with the other national states of Louisiana, Florida and Texas in one of three ways: diplomatic negotiation, international arbitration, or force. By joining the Union, however, Rhode Island surrendered to the Federal Government its sovereign right to exercise any of these three national powers. It must, therefore, look to the Federal Government to provide a remedy for the injury to its sovereignty.[16] A dispute such as this between the States is a substantial and serious one.

The attempt of these three defendant states under color of Public Law 31 to extend their boundaries nine nautical

[16] *Missouri* v. *Illinois*, 180 U. S. 208 (1901); *Missouri* v. *Illinois*, 200 U. S. 496, 518 (1906); *Kansas* v. *Colorado*, 206 U. S. 46, 47 (1907).

miles into the Gulf is most similar, if not identical, to the attempts of Mexico to extend her boundaries nine nautical miles into the Gulf.[17] Rhode Island here insists that in accordance with international law the area off the coasts of these three defendant states which is seaward of ordinary low water mark is part of the national domain to the bounds of United States territory, the three-mile limit, and thence is part of the high seas which are the public domain of the family of nations and must therefore remain free from any assertions of sovereignty by these three states.[18] This assertion by the three defendant states is also similar to the attempt by the U. S. S. R. to claim a belt of territorial waters twelve miles wide off the coast of Siberia. This unwarranted assertion recently led to a protest by the Government of the United States.[19]

Nor does the fact that Rhode Island is not here claiming that its interests are in the nature of a property right affect its standing in this Court. In a long line of decisions, states have been permitted to bring boundary disputes without the showing of a property right in the state bringing the suit.[20]

In the subject matter of this very controversy this Court has referred to a Master the method of determining the seaward boundaries off the coast of California.[21]

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[17] 1 Hackworth, *Digest of International Law*, 639-41.

[18] See *Fisheries* Case, (*United Kingdom v. Norway*) 1951 I. C. J. Reports 116, 126.

[19] See Vol. 99 Cong. Rec. 4266.

[20] See cases cited in footnotes 8 and 9, page 13, *supra*.

[21] Order of December 3, 1951, 342 U. S. 891.

II.

Public Law 31 is invalid since Congress has no power whatever to dispose of the Federal Government's "paramount rights" with respect to these resources, since the "paramount rights" of the Federal Government do not constitute "property" within the meaning of Article IV, Section 3, Clause 2 of the Constitution, but constitute instead one attribute of a non-delegable responsibility of national sovereignty—namely, the responsibility of the Federal Government to provide for the common defense and to conduct foreign relations.

The Constitution, in Article IV, Section 3, Clause 2, provides that the "Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory *or other Property belonging to* the United States;". The remainder of this same sentence in this very clause reads as follows: "and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State." As this language clearly reflects, the Constitutional Convention was dealing with the Northwest Territory and the claims of the United States and of the several states therein. And see the discussion on pages 21-24 of this brief of the predecessor legislation to Public Law 31 that was before Congress in 1948.

In the *California* case, both the Federal Government and the State of California asked this Court to find that the "property rights" were theirs. This Court expressly declined to rule on the question of ownership, but ruled that the total of rights were summed up in the expression "paramount rights and power", leaving only police rights in the coastal states.

This Court further held that these "paramount rights" of the United States are possessed as an attribute of national sovereignty because of the responsibility of the Federal Government to provide for the common defense and to conduct foreign relations. *United States* v. *California*, 332 U. S. 19, 35-36; *cf. United States* v. *Texas*, 339 U. S. 707. In view of the nature of these Federal "paramount rights" there is no Federal "property" to be disposed of,

in the sense employed by the framers of the Constitution when they gave the Congress the right to dispose of Federal "property".[22] Accordingly, Congress cannot validly divest the Federal Government of the "paramount rights" of the Federal Government with respect to these resources. In short, the Federal Government, instead of owning "property" which can be disposed of by the Congress, has a sovereign *responsibility* which it cannot delegate.

The debates at the Constitutional Convention of 1787 on Article IV, Section 3, Clause 2 (the "property clause" of the Constitution), show that what the draftsmen intended was to give the Federal Government the power to dispose of the Northwest Territory, and such other similar "property", in the traditional sense of that term, as the United States might subsequently acquire.

The power to dispose of property is not referred to in any manner whatever in Article I, Section 8, where the powers of Congress are specifically enumerated. This power appears in Article IV, Section 3, Clause 2 which follows immediately the paragraph (Article IV, Section 3, Clause 1) dealing with the admission of new states to the Union. The admissions paragraph and the "property clause" were drafted in order to take care of the problems posed by the Northwest Territory. Some of the original thirteen States claimed parts of the territory as against each other and as against the United States, and therefore it was proposed that Congress be given both the power to admit new States to the Union and the power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

In terms of the legislative history of Public Law 31 itself, it is worth noting that this very point was called to the attention of a Joint Judiciary Committee of the Senate and House of Representatives, conducting hearings in 1948

[22] See the discussion in the footnote at p. 6, *supra*.

on predecessor proposals substantially identical with the measure which ultimately became Public Law 31.

When this predecessor legislation was before the Congress in 1948, the specific issue here under discussion was adverted to by Representative Sam Hobbs of Alabama, in testimony which he gave before the Joint Commitete.

The following colloquy, which took place on March 6, 1948,[32] is of interest in this connection:

> "MR. WOODWARD. Mr. Congressman, the Congress have the power to vest in the States all rights, whatever rights it has, if it sees fit, does it not?
>
> "REPRESENTATIVE HOBBS. No, sir. My answer is categorically, no, sir, with the most profound respect for the distinguished gentleman, I cannot see that at all. How you can deed somebody else's property, or how you can even quitclaim—quitclaim is a specious, weazel word . . . .
>
> "SENATOR MOORE. It is in effect a conveyance.
>
> "REPRESENTATIVE HOBBS. Sure it is. It is an attempt to, but it is utterly innocuous. If we pass this bill tomorrow, it is not within the power of Congress, or anyone else, to deed land that does not belong to the Federal Government or to quitclaim, or to do anything that would convey it.
>
> "I think it is perfectly clear that the high seas, to low water mark, belong to the family of nations subject to the exclusive right, which every littoral nation has, to control a three-mile belt as now decreed by the law of nations."

To much the same effect was a statement which Representative Hobbs made a few days earlier, in testimony during the same Joint Hearings, when he said:

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[32] Joint Hearings before the Committees on the Judiciary, Congress of the United States, 80th Cong. 2d Sess., on S. 1988 and similar House Bills, p. 998).

"I believe that the war powers granted by the Constitution to the Federal Government are paramount to any State right in the subject of sub-ocean oil." [24]

Again, testifying before the same Committees, Representative Hobbs said:

"I maintained, and still maintain that no one owns the oceans, that they are the common property of the family of nations, but that each littoral nation has the rights and privileges which inure to their sovereignty and that because of that sovereignty they have certain paramount rights." [25]

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[24] *Op. Cit., supra*, p. 820. Representative Hobbs, a widely respected Constitutional lawyer, was known for his views as a strong upholder of States' rights. When he was asked, in connection with this testimony, how he could reconcile his views concerning the offshore resources with his views on States' rights, he said:

"I think we ought to preserve the States' rights that are, and not give them those that are not." (*Op. Cit. supra*, p. 821).

Representative Gossett, commenting on this testimony by Representative Hobbs, said:

"This Congressman is an extremely eminent lawyer, and was a judge before coming to Congress." (*Ibid.*).

[25] *Op. Cit., supra*, p. 895. Compare James Madison's statements in 1788, quoted in footnote 1, p. 6, *supra*. And see the related statement of Governor Randolph, at the 1788 Virginia Convention, where, discussing the possible grant to Spain of navigation rights on the Mississippi, he said:

"It will moreover be contrary to the law of nations to relinquish territorial rights. To make a treaty to alienate any part of the United States, will amount to a declaration of war against the inhabitants of the alienated part . . . Are not the states interested in the back lands, as has been repeatedly observed?" (Quoted from Governor Randolph's remarks, June, 1788, at the Virginia Convention—Journal of the Virginia Convention of 1788, page 257). And, in the course of these same remarks, Governor Randolph went on to make the following statement:

"The gentleman wishes us to show him a clause which shall preclude Congress from giving away this right. It is first

In this same testimony, Representative Hobbs said of the proposed legislation:

> "How any Member of the Congress, the Senate or the House, can support any of these bills under the circumstances and in the face of the decision of the Supreme Court of the United States I simply cannot imagine! Impairing, if not taking away from the Federal Government, its national defense grant of power in the Constitution!" [26]

This testimony by Representative Hobbs was based on the history of Article IV, Section 3, Clause 2 at the Constitutional Convention of 1787. From a review of the debates at the Convention, it is clear that Article IV, Section 3, Clause 2 was inserted in the Constitution in order to take care of certain problems that had arisen with respect to the Northwest Territory. At the time of the Constitutional Convention, there were disputes among the original thirteen states, and there were disputes between several of the original states and the Federal Government, concerning the disposition to be made of the Northwest Territory. In order to meet this situation, the framers of the Constitution inserted two specific provisions, as additions to the earlier drafts of the Constitution. These two provisions

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incumbent upon him to show where the right is given up. There is a prohibition naturally resulting from the nature of things, it being contradictory and repugnant to reason, and the law of nature and nations, to yield the most valuable right of a community, for the exclusive benefit of one particular part. But there is an expression which clearly precludes the General Government from ceding the navigation of this river. In the 2d clause of the 3d section of the 4th Article, Congress is empowered 'to dispose of, and make all *needful* rules and regulations respecting the *territory*, or *other property* belonging to the United States'. But it goes on and provides, that '*nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state*'. Is this a claim of the particular State of Virginia? If it be, there is no authority in this Constitution to prejudice it." (Emphasis in original). *Ibid.*, at page 258.

[26] *Op. Cit., supra*, p. 997.

ultimately took the form of Article IV, Section 3, Clause 1 (dealing with the admission of new states to the Union), and Article IV, Section 3, Clause 2 (dealing with the disposal of property belonging to the Federal Government).

Based on the records of the Constitutional Convention, and based on correspondence between various framers of the Constitution, it appears that this language was originally drafted by Gouverneur Morris.[27] In a letter which he wrote on this subject in 1803, Gouverneur Morris indicated that he was the author of these two provisions, and indicated also that *both* provisions were addressed specifically to the problems posed by the Northwest Territory. See Gouverneur Morris' letter to Henry W. Livingston, December 4, 1803, as set out in Farrand, Records of the Federal Convention, Vol. 3, page 404, where, addressing himself to the admission of new states to the Union, in response to an inquiry from Livingston, he said:

> "Your inquiry . . . is substantially whether Congress can admit, as a new state, territory which did not belong to the United States when the Constitution was made. In my opinion they cannot. I always thought that, when we should acquire Canada and Louisiana, it would be proper to govern them as provinces . . . In wording the third section of the Fourth Article I went as far as circumstances would permit to establish the exclusion."

While it is clear that Gouverneur Morris' narrow interpretation of Article IV, Section 3, Clause 1, with respect to the admission of new states cannot be applied literally, it is nevertheless of considerable interest in connection with the current litigation, since it presents the ideas of the author of Article IV, Section 3 with respect to the limited scope which the framers of the Constitution had in mind when they drafted it—that is, the intention that this

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[27] Gouverneur Morris, the author of this portion of the Constitution, was present at the Virginia Convention of 1788 referred to above. See Beveridge, *Life of John Marshall*, Vol. 1, p. 401.

section should be confined to the Northwest Territory. Obviously, in terms of the admission to the Union of new states, this section has been broadened to include areas which did not form part of the Northwest Territory, but which, like the Northwest Territory, have become the *property* of the United States. Applying the same principle that has resulted in extending Article IV, Section 3, Clause 1 to areas which are *similar* in their nature to the Northwest Territory, it follows that the section and clause can also be extended to apply to the disposal of property that is similar to the property which the Federal Government originally owned in the Northwest Territory—that is, property in the conventional sense of that term. It also follows that the "property clause" of the Constitution has *no applicability whatever* to the resources under the marginal seas off the coasts of the United States, since, as this Court has repeatedly held, those resources do not constitute "property" of either the United States or the adjoining states.[28]

There is attached to this brief, as Appendix B, a detailed presentation of all of the references to Article IV, Section 3, Clause 2, at the Constitutional Convention of 1787, and there is also attached, as Appendix C, a detailed presenta-

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[28] *Cf.* the following statements made at the Virginia Convention of 1788, *Op. Cit. supra*, by John Marshall and Governor Randolph: Governor Randolph, Journal of the Virginia Convention, at p. 259:

> "I contend that *there is no power given the General Government, to surrender that navigation.* There is a positive prohibition in the words [of Article 4, Section 3, Clause 2] I have just mentioned." (Emphasis added).

John Marshall, page 299:

> "What government is able to protect you in time of war? Will any state depend on its own exertions? The consequence of such dependence and withholding this power (to raise and support armies, provide for the common defense, etc.) from Congress will be, that state will fall after state, and be a sacrifice to the want of power in the General Government. *United we are strong, divided we fall.*" (Emphasis in original).

tion of the discussion of this and related matters at the Virginia Convention of 1788.

There is one additional point that should be borne in mind in connection with the matters discussed above. The discussion presented in these pages, broadly speaking, is summed up at page 20, *supra*, in the following words:

> *"Public Law 31 is invalid since Congress has no power whatever to dispose of the Federal Government's 'paramount rights' with respect to these resources, since the 'paramount rights' of the Federal Government do not constitute 'property' within the meaning of Article IV, Section 3, Clause 2 of the Constitution, but constitute instead one attribute of a non-delegable responsibility of national sovereignty — namely, the responsibility of the Federal Government to provide for the common defense and to conduct foreign relations."*

In other words, it is respectfully submitted that the *responsibility of the Federal Government* for the conduct of foreign relations, and for providing for the common defense, is a responsibility that *cannot* be delegated to some of the States, or even to all of them, under the Constitution.

But even if it were to be assumed for the purposes of argument, that there are circumstances under which the Federal Government *could* delegate some aspects of its power to provide for the common defense and to conduct foreign relations, it is respectfully submitted that the Congress did not even *purport* to effect such a delegation in Public Law 31. By its own explicit terms, Public Law 31, which in fact amounts to no more than a "quitclaim" deed, attempts to deal with the "paramount rights" of the Federal Government as if these "paramount rights" constituted "property". It is clear from the legislative history of Public Law 31 that the Congress intended to surrender its "property" interests to the adjoining states and that no other "rights" or "responsibility" of Congress was

surrendered or delegated. Since the United States has no "property" interests in the offshore areas, Public Law 31 purported to quitclaim "property" which the United States did not own, and Public Law 31 is therefore invalid. Thus, if the Court so desires this Court can strike down Public Law 31 without now having to consider whether the responsibilities and rights which flow from the "paramount rights" possessed by the United States as sovereign *could* be delegated to the states, since in the present case there was no intent on the part of Congress to give the states the powers and duties concerning the common defense and foreign relations upon which those "paramount rights" are predicated. Congress expressly stated in Public Law 31, in fact, that the statute was not intended to abridge these attributes of national sovereignty.

III.

Aside from the basic inapplicability of the "property clause" of the Constitution, Public Law 31 is an unconstitutional exercise of the power of Congress to dispose of public lands.

Even if this Court should be of the opinion that Article IV, Section 3 of the Constitution is applicable to these submerged lands, Public Law 31 is still an invalid exercise of the congressional power to dispose of public lands.

In *United States* v. *California*, 332 U. S. 19, 40 (1947), this Court, in commenting on the argument of the State of California that because of the delay of Federal Government officials in pressing the Federal claim over the submerged lands the Government was barred from enforcing its rights, said:

> "The Government, which *holds its interests here as elsewhere in trust for all the people*, is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; . . ." (Emphasis supplied)

The *California, Louisiana* and *Texas* cases, in holding that the United States has the paramount right and dominion over these lands and resources, made it clear that the same lands here in controversy are not and never were the property of the defendant states. In the *Texas* case this Court pointed out that whatever property rights did exist were "so subordinated to the rights of sovereignty as to follow sovereignty".

These property rights are thus held by the United States in its constitutional capacity as trustee for all the people, and not just for those citizens who happen to be resident in these four of the forty-eight states. The 160 million American people are all beneficiaries of this constitutional trust. Whatever disposition may be made, and whatever formula may be applied to that disposition, it must be shown that there is a benefit to the public interest, that is, the national interest.

Public Law 31 makes no attempt to meet such a standard. As its legislative history shows, in its essence it is simply a congressional attempt to overrule the three decisions of this Court. These national assets, estimated to be worth at least $50 billion, as well as the impounded sum of $62 million, are made available solely to the four defendant states and their citizens.

Such congressional action does not measure up to the test required of a trustee, whether public or private. It is not enough to say that there can be no judicial inquiry into legislative discretion, for congressional discretion must be exercised within the limits of a national purpose. The courts, while always sensitive to the necessity of broad discretion for trustees, have always been willing to examine whether discretion in fact exercised is within the fiduciary relationship.

And this is true of this Court. In *Illinois Central Railroad Co.* v. *Illinois*, 146 U. S. 387 (1892) the grant by the Illinois legislature of submerged lands in Lake Michigan to

a railroad company was held invalid under the Fourteenth Amendment. The Court there said (page 453):

> ". . . A grant of all the lands under the navigable waters of a State has never been adjudged to be within the legislative power; and any attempted grant of the kind would be held, if not absolutely void on its face, as subject to revocation. The State can no more abdicate its trust over property in which the whole people are interested, like navigable waters and soils under them, so as to leave them entirely under the use and control of private parties, . . . than it can abdicate its police powers in the administration of government and the preservation of the peace."

It is submitted that the grant by a state legislature to a private corporation of navigable waters is analogous to the grant here by Congress of the submerged lands to the defendant states; that the limitation of the Fourteeenth Amendment on a state legislature is, at the very least, no more strict than the limitations of Article IV, Section 3, Clause 2, on the Congress, if there is to be any limitation whatsoever. And the nature of the limitation is similar—as a state legislature must act for the interest of the citizens of that state, so must the Congress legislate for and within the national interest.

Just as this Court has held that the congressional spending power has its limitations, in that it is limited by the test of the general welfare [29] so has it indicated that the test of public iterest can be made applicable to the so-called "property clause" of Article IV. In *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288 (1936) this Court said in discussing Article IV, Section 3 (p. 338):

> "That method [disposal of property], of course, must be an appropriate means of disposition according to the nature of the property, it must be one adopted in the public interest as distinguished from private or personal ends, . . ."

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[29] *Helvering* v. *Davis*, 301 U. S. 619, 640 (1937).

And Congress when disposing of the public lands has in the past always met the test of public interest. Most of such dispositions of the public lands, whether by gift or otherwise, have been integrally tied to the development of the western frontier, which was clearly a development in the national interest resulting in great improvement in the welfare of the entire nation.[30] There was no intent to benefit the western states or territories *per se*, except as such benefits were incident to that to the whole country.

In the case at bar, however, the sole discernible benefit is to the defendant states and their own citizens, and this benefit will and can be received only at the price of taking these lands away from the other forty-four states and their citizens. As broad as the discretion of Congress admittedly is in its disposition of public property, it must ultimately be held to the necessary test of its actions as the trustee for the nation.[31] Public Law 31 can not meet the fiduciary test, since it is in effect a straight gift for the benefit of the four defendant states in derogation of Rhode Island and its forty-three sister states, a gift which is made by reversing the *California*, *Louisiana* and *Texas* decisions of this Court:[32]

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[30] See the Homestead Acts, Rev. Stat. Sec. 2289 *et seq.*, 43 U. S. C. A., Secs. 161, *et seq.*; the Timber and Stone Acts, 20 Stat. 89, 43 U. S. C. A., Secs. 311, *et seq.*; the Carey Act, 28 Stat. 422, 43 U. S. C. A., Secs. 641, *et seq.*; the Desert Land Act, 19 Stat. 377, 43 U. S. C. A., Secs. 321, *et seq.*

[31] See *United States* v. *Beebe*, 127 U. S. 338, 342 (1888); *United States* v. *Trinidad Coal Co.*, 137 U. S. 160, 170 (1890); *Camfield* v. *United States*, 167 U. S. 518, 524 (1897); *Causey* v. *United States*, 240 U. S. 399, 402 (1916).

[32] The Report of the Senate Committee on Interior and Insular Affairs stated:

> "The purpose of this legislation is to write the law for the future as the Supreme Court believed it to be in the past—that the States shall own and have proprietary use of all lands under navigable waters within their territorial jurisdiction, whether inland or seaward subject only to the governmental powers delegated to the United States by the Constitution."

Report No. 133 to accompany S. J. Res. 13, 83d Cong., 1st Sess., March 27, 1953, page 8.

IV.

Public Law 31 is unconstitutional in its denial to Rhode Island of its right to be treated on an equal footing with the defendant states.

In *United States* v. *Texas*, 339 U. S. 707, 719 (1950) this Court said:

> "... once low-water mark is passed the international domain is reached. Property rights must then be so subordinated to political rights as in substance to coalesce and unite in the national sovereign. Today the controversy is over oil. Tomorrow it may be over some other substance or mineral or perhaps the bed of the ocean itself. If the property, whatever it may be, lies seaward of low-water mark, its use, disposition, management, and control involve national interests and national responsibilities. That is the source of national rights in it. Such is the rationale of the California Decision which we have applied to Louisiana's Case. The same result must be reached here if 'equal footing' with the various States is to be achieved. Unless any claim or title which the Republic of Texas had to the marginal sea is subordinated to this full paramount power of the United States on admission, there is or may be in practical effect a subtraction in favor of Texas from the national sovereignty of the United States. Yet neither the original thirteen States (United States v. California, supra (332 US pp 31, 32, 91 L ed 1895, 1896, 67 S Ct 1658) nor California nor Louisiana enjoys such an advantage. The 'equal footing' clause prevents extension of the sovereignty of a State into a domain of political and sovereign power of the United States from which the other States have been excluded, just as it prevents a contraction of sovereignty (Pollard's Lessee v. Hagan (US) 3 How 212, 11 L ed 565, supra) which would produce inequality among the States. For equality of States means that they are not 'less or greater, or different in dignity or power.' See Coyle v. Smith, 221 US 559, 566, 55 L ed 853, 857, 31 S Ct 688. ..."

Rhode Island is one of the thirteen original States of the Union. The Acts of Congress admitting the four defend-

ant states to the Union (relevant parts are set forth in Appendix A) state, in substantially identical language, that they were to be admitted into the Union on an "equal footing" with the original States in all respects.

This relationship to Rhode Island the Congress does not have the power to change.[33] Each defendant state nonetheless is here proposing through Public Law 31, an "extension of the sovereignty of a State into a domain of political and sovereign power of the United States from which the other States have been excluded, . . ." This they do by their assertion of ownership of the property interests in the marginal sea off the low water mark off their coasts. As already stated, these property interests are estimated to be worth at least $50 billion.

Nor are these assertions of jurisdiction by the defendants over the recognized sovereignty of the United States cured by a theoretical grant of the same sovereignty and interests in property to Rhode Island and the other maritime states which by a geographic accident front on the Atlantic or Pacific Oceans. The facts are that there are no billions of dollars of natural resources in the form of oil off the shores of Rhode Island or the shores of the other coastal states so far as is now known, and none were known at the time Public Law 31 was enacted. Once this factual frame of reference is accepted, the supposed equality of treatment which Public Law 31 gives to all coastal states is clearly utterly theoretical. "Equal footing" requires the *effect* of equality of treatment by Congress, not a mere form of verbal equality.

Three of the four defendant states—Louisiana, Florida and Texas—also propose to use Public Law 31 as the vehicle to extend their property interests in the marginal sea farther than the three mile limit. This proposal too carries acquiescence by the defendant individuals. And here not even a pretense is made that Rhode Island is

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[33] See *Skiriotes* v. *Florida*, 313 U. S. 69 (1941); *Coyle* v. *Smith*, 221 U. S. 559 (1911); *Texas* v. *White*, 7 Wall. 700 (1868).

to receive even theoretical equality, for Public Law 31 on its face provides that:

> ". . . in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico, . . ." (Section 2(b))

The proposals of these three states to extend their boundaries well into the area of the international high seas, if unchallenged, are bound to have a deleterious effect on the economy of Rhode Island. As has been indicated, many of its citizens earn their living in the New England fishing industry which is heavily concentrated off the Grand Banks, well within nine nautical miles of the shores of Newfoundland, Nova Scotia, and New Brunswick. Rhode Island is fearful, and properly so, that such claims under the color of a law passed by the national legislature, will invite retaliatory claims against the New England fishing industry by the Dominion of Canada. Such retaliation might take the form of total exclusion from the area. At best a policy of discriminatory license fees in comparison with national privileges granted to Canadian fishermen may result.

Rhode Island, having surrendered its national rights when it became a member of the original Union, must now look to that Union to protect it by adhering to the long accepted principle of international law that the waters beyond the three mile belt are international and belong to the family of nations. As between nations three miles is the maximum width which any country can properly claim. In *Cunard S. S. Co.* v. *Mellon,* 262 U. S. 100, 122, (1923), this Court said:

> "It now is settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, . . . and a marginal belt of the sea extending

from the coast line outward a marine league, or 3 geographic miles."

The *California* case pointed out that the United States has accepted this rule of international law as part of its conduct of foreign relations. Rhode Island, therefore, as a member of the original Union is so bound and the later admitted defendants are bound also. This national policy on the width of the maritime belt has been historically implemented by the exercise of the treaty power of the United States.[34] Indeed, as recently as two months *after* the passage of Public Law 31 the United States has reassumed the obligation to support the three mile limit in its Treaty with Japan.[35] The assertions of the three defendant states of Florida, Louisiana and Texas that their boundaries extend beyond the three mile belt are, therefore, a violation of international treaties. In the absence of clear statutory repeal of these treaty obligations, Public Law 31 should not be construed to authorize treaty violations by these three states.[36]

Rhode Island is the smallest of the forty-eight States. It has practically no natural resources. To Rhode Island, therefore, it is of prime importance that its equality with its sister states be preserved intact so that it may honorably hold its place within this Union. Its history shows that its citizens and people once felt strongly that the Constitutional Convention of 1787 violated the Articles of Confederation.[37] It is, therefore, sensitive to its convic-

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[34] See the so-called "liquor" Treaties with Great Britain, 43 Stat. 1761; Germany, 43 Stat. 1815; Panama, 43 Stat. 1875; The Netherlands, 44 Stat. 2013; Cuba, 44 Stat. 2395; and Japan, 46 Stat. 2446.

[35] Department of State Bulletin, Vol. XXVIII, No. 725, May 18, 1953, p. 721.

[36] *Cook* v. *United States*, 288 U. S. 102 (1933).

[37] Perhaps a compelling reason for Rhode Island's delay in ratifying the Constitution was the feeling widespread among its citizenry that the Constitutional Convention of 1787 did not follow the Articles of Confederation. That Document, proposed on No-

tion that it must guard its rights under the Constitution so that it may maintain its equality with the defendant states. Public Law 31 is in essence a denial of that equality and is, further, an invasion by Congress of the field of judicial power in a legislative attempt to reverse the Constitutional decisions of this Court which protect that equality.

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vember 15, 1777, and adopted several years later, described itself in the following words: "Articles of Confederation and perpetual Union between states of (and then named the thirteen original states).

Article 2 said in part: "Each state retaines its sovereignty, freedom and independence and every power, jurisdiction and right which is not by this confederation expressly delegated to the United States in Congress assembled." Article 5, Clause 2, stated: "No state shall be represented in Congress by less than two nor more than seven members . . ." Article 5, Clause 4 was in these words: "In determining questions in the United States in Congress assembled, each state shall have one vote." Article 13 stated: ". . . and the Articles of this Confederation shall be inviolably observed by every state; and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless alteration be agreed to in a congress of the United States, and be afterwards confirmed by the legislature of each state."

The convention of the colonies presented their finished Constitution on September 17, 1787. All the states but Rhode Island were represented. The submission resolution read in part: ". . . That it is the opinion of this convention that as soon as the convention of nine states shall have ratified this constitution, the United States in Congress assembled should fix a day on which elections should be appointed by the states which shall have ratified the same . . ." to elect a president "and the time and place for commencing proceedings under this constitution." This was done in New York in April, 1789. The constitutional senators and representatives met there on the 6th of that month. The senate convened for the special purpose of opening and counting the electoral votes and announced Washington's unanimous election. Charles Thomson, the Secretary of the Continental Congress, was dispatched with the official notice which he delivered to the President-Elect at Mount Vernon on April 14th. Washington was sworn in New York and the Continental Congress adjourned *sine die*.

Since Rhode Island was not represented at the convention, there was in that state a considerable body of opinion that the adoption of the Constitution by nine states only was a violation of Article 13 of the Articles of Confederation.

V.

The suit of Rhode Island is not a suit against the United States.

The individual defendants in this suit, all Federal officials acting under color of authority of Public Law 31, will, unless restrained by this Court, deprive Rhode Island of its rightful portion of the sum of $62 million now held by them or under their control and will acquiesce in the unconstitutional assertions of the defendant states.

Such actions are beyond the powers of these officers and are, therefore, not the conduct of the sovereign, the United States.[38] Such actions violate the Constitution, and hence do not enjoy the lawful authority of the sovereign. They may, therefore, be enjoined.[39]

CONCLUSION.

Wherefore, it is respectfully submitted that motion for leave to file this complaint be granted and that, upon hearing, the relief prayed for in the complaint be granted.

Respectfully submitted,

WILLIAM E. POWERS,
Attorney General of Rhode Island.
THOMAS G. CORCORAN,
Attorneys for Complainant.

CORCORAN, YOUNGMAN & ROWE,
Of Counsel.

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[38] *Larson* v. *Domestic and Foreign Corp.*, 337 U. S. 682, 690 (1949).

[39] *Philadelphia Co.* v. *Stimson*, 223 U. S. 605, 620 (1912); *See Georgia R. Co.* v. *Redwine*, 342 U. S. 299, 304 (1952).

APPENDIX A.

PUBLIC LAW 31, 83D CONGRESS, 1ST SESSION, C. 65

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Submerged Lands Act."

TITLE I.

DEFINITION.

SEC. 2. When used in this Act—

(a) The term "lands beneath navigable waters" means—

(1) all lands within the boundaries of each of the respective States which are covered by nontidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction;

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, and

(3) all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters, as hereinabove defined;

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or

the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;

(c) The term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters;

(d) The terms "grantees" and "lessees" include (without limiting the generality thereof) all political subdivisions, municipalities, public and private corporations, and other persons holding grants or leases from a State, or from its predecessor sovereign if legally validated, to lands beneath navigable waters if such grants or leases were issued in accordance with the constitution, statutes, and decisions of the courts of the State in which such lands are situated, or of its predecessor sovereign: *Provided, however,* That nothing herein shall be construed as conferring upon said grantees or lessees any greater rights or interests other than are described herein and in their respective grants from the State, or its predecessor sovereign;

(e) The term "natural resources" includes, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power, or the use of water for the production of power;

(f) The term "lands beneath navigable waters" does not include the beds of streams in lands now or heretofore constituting a part of the public lands of the United States if such streams were not meandered in connection with the public survey of such lands under the laws of the United States and if the title to the beds of such streams was lawfully patented or conveyed by the United States or any State to any person;

(h) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

TITLE II.

LANDS BENEATH NAVIGABLE WATERS WITHIN STATE BOUNDARIES.

SEC. 3. RIGHTS OF THE STATES.—

(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof;

(b) (1) The United States hereby releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources; (2) the United States hereby releases and relinquishes all claims of the United States, if any it has, for money or damages arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters; and (3) the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States shall pay to the respective States or their grantees issuing leases covering such lands or natural resources all moneys paid thereunder to the Secretary of the Interior or to the Secretary of the Navy or to the Treasurer of the United States and subject to the control of any of them of this Act, except that portion of such moneys which (1) is required to be returned to a lessee; or (2) is deductible as provided by stipulation or agreement between the United States and any of said States;

(c) The rights, powers, and titles hereby recognized, confirmed, established, and vested in and assigned to the respective States and their grantees are subject to each lease executed by a State, or its grantee, which was in force and effect on June 5, 1950, in accordance with its

terms and provisions and the laws of the State issuing, or whose grantee issued, such lease, and such rights, powers, and titles are further subject to the rights herein now granted to any person holding any such lease to continue to maintain the lease, and to conduct operations thereunder, in accordance with its provisions, for the full term thereof, and any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued such lease: *Provided, however,* That, if oil or gas was not being produced from such lease on and before December 11, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950, under the provisions of such lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued, such lease: *Provided, however,* That within ninety days from the effective date hereof (i) the lessee shall pay to the State or its grantee issuing such lease all rents, royalties, and other sums payable between June 5, 1950, and the effective date hereof, under such lease and the laws of the State issuing or whose grantee issued such lease, except such rents, royalties, and other sums as have been paid to the State, its grantee, the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States and not refunded to the lessee; and (ii) the lessee shall file with the Secretary of the Interior or the Secretary of the Navy and with the State issuing or whose grantee issued such lease, instruments consenting to the payment by the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States to the State or its grantee issuing the lease, of all rents, royalties, and other payments under the control of the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States or the United States which have been paid, under the lease, except such rentals, royalties, and other payments as have also been paid by the lessee to the State or its grantee;

(d) Nothing in this Act shall affect the use, development, improvement, or control by or under the constitutional authority of the United States of said lands and waters for the purposes of navigation or flood control or the produc-

tion of power, or be construed as the release or relinquishment of any rights of the United States arising under the constitutional authority of Congress to regulate or improve navigation, or to provide for flood control, or the production of power;

(e) Nothing in this Act shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian, relating to the ownership and control of ground and surface waters; and the control, appropriation, use, and distribution of such waters shall continue to be in accordance with the laws of such States.

SEC. 4. SEAWARD BOUNDARIES.—The seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.

SEC. 5. EXCEPTIONS FROM OPERATION OF SECTION 3 OF THIS ACT.—There is excepted from the operation of section 3 of this Act—

(a) all tracts or parcels or land together with all accretions thereto, resources therein, or improvements thereon, title to which has been lawfully and expressly acquired by the United States from any State or from any person in whom title had vested under the law of the State or of the United States, and all lands which

the United States lawfully holds under the law of the State; all lands expressly retained by or ceded to the United States when the State entered the Union (otherwise than by a general retention or cession of lands underlying the marginal sea); all lands acquired by the United States by eminent domain proceedings, purchase, cession, gift, or otherwise in a proprietary capacity; all lands filled in, built up, or otherwise reclaimed by the United States for its own use; and any rights the United States has in lands presently and actually occupied by the United States under claim of right;

(b) such lands beneath navigable waters held, or any interest in which is held by the United States for the benefit of any tribe, band, or group of Indians or for individual Indians; and

(c) all structures and improvements constructed by the United States in the exercise of its navigational servitude.

SEC. 6. POWERS RETAINED BY THE UNITED STATES.—(a) The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by section 3 of this Act.

(b) In time of war or when necessary for national defense, and the Congress or the President shall so prescribe, the United States shall have the right of first refusal to purchase at the prevailing market price, all or any portion of the said natural resources, or to acquire and use any portion of said lands by proceeding in accordance with due process of law and paying just compensation therefor.

SEC. 7. Nothing in this Act shall be deemed to amend, modify, or repeal the Acts of July 26, 1866 (14 Stat. 251), July 9, 1870 (16 Stat. 217), March 3, 1877 (19 Stat. 377),

June 17, 1902 (32 Stat. 388), and December 22, 1944 (58 Stat. 887), and Acts amendatory thereof or supplementary thereto.

SEC. 8. Nothing contained in this Act shall affect such rights, if any, as may have been acquired under any law of the United States by any person in lands subject to this Act and such rights, if any, shall be governed by the law in effect at the time they may have been acquired: *Provided, however*, That nothing contained in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that the law under which such rights may be claimed in fact or in law applies to the lands subject to this Act, or authorizes or compels the granting of such rights in such lands, and that the determination of the applicability or effect of such law shall be unaffected by anything contained in this Act.

SEC. 9. Nothing in this Act shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed.

SEC. 10. Executive Order Numbered 10426, dated January 16, 1953, entitled "Setting Aside Submerged Lands of the Continental Shelf as a Naval Petroleum Reserve", is hereby revoked insofar as it applies to any lands beneath navigable waters as defined in section 2 hereof.

SEC. 11. SEPARABILITY.—If any provision of this Act, or any section, subsection, sentence, clause, phrase or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, subsection, sentence, clause, phrase or individual word to other persons and circumstances shall not be affected thereby; without limiting the generality of the foregoing, if subsection 3 (a), 1, 3 (a) 2, 3 (b) 1, 3 (b) 2, 3 (b) 3, or 3 (c) or any provision of any of those subsections is held invalid, such subsection or provision shall be held separable and the remaining subsections and provisions shall not be affected thereby.

RELEVANT PORTIONS OF THE ACTS OF CONGRESS ADMITTING THE STATES OF ALABAMA, LOUISIANA, FLORIDA, TEXAS AND CALIFORNIA TO THE UNION.

Alabama Act of March 2, 1819, c. 47, 3 Stat. 489):

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the inhabitants of the territory of Alabama be, and they are hereby, authorized to form for themselves a constitution and state government, and to assume such name as they may deem proper; and that the said territory, when formed into a state, shall be admitted into the union, upon the same footing with the original states, in all respects whatever.

Louisiana (Act of April 8, 1812, c. 50, 2 Stat. 701):

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the said state shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever, by the name and title of the state of Louisiana:

Florida (Act of March 3, 1845, c. 48, 5 Stat. 742):

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, that the States of Iowa and Florida be, and the same are hereby, declared to be States of the United States of America, and are hereby admitted into the Union on equal footing with the original States, in all respects whatsoever.

Texas (Joint Resolution No. 8 of March 1, 1845, 5 Stat. 797):

Be it resolved, That a State, to be formed out of the present Republic of Texas, with suitable extent and boundaries, and with two representatives in Congress, until the next apportionment of representation, shall be admitted into the Union, by virtue of this act, on an equal footing with the existing States, as soon as the terms and conditions of such admission, and the ces-

sion of the remaining Texian territory to the United States shall be agreed upon by the Governments of Texas and the United States:

California (Act of September 9, 1850, c. 50, 9 Stat. 452):

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the State of California shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

LEGISLATIVE ACTS SETTING FORTH BOUNDRY CLAIMS OF TEXAS AND LOUISIANA AND CONSTITUTIONAL PROVISION SETTING FORTH BOUNDARY CLAIM OF FLORIDA.

TEXAS.

Act of May 16, 1941, L. Texas, 47th Leg., p. 454.

Boundary Statute—*General and Special Laws of Texas*, 47th Legislature, Regular Session, 1941, page 454:

Be it enacted by the Legislature of the State of Texas:

"Section 1. That the gulfward boundary of the State of Texas is hereby fixed and declared to be a line located in the Gulf of Mexico parallel to the three (3) mile limit, as determined according to said ancient principles of international law, which gulfward boundary is located twenty-four (24) marine miles further out in the Gulf of Mexico than the said three (3) mile limit.

"Section 2. That, subject to the right of the government of the United States to regulate foreign and interstate commerce under Section 8 of Article 1 of the Constitution of the United States, and to the power of the government of the United States over cases of admiralty and maritime jurisdiction under Section 2 of Article 3 of the Constitution of the United States, the State of Texas has full sovereignty over all the waters of the Gulf of Mexico and of the arms of the Gulf of Mexico within the boundaries of Texas, as herein fixed, and over the beds and shores of the Gulf of Mexico and all arms of the said Gulf within the boundaries of Texas, as herein fixed.

"Sec. 3. That the State of Texas owns, in full and complete ownership, the waters of the Gulf of Mexico and of the arms of the said Gulf, and the beds and shores of the Gulf of Mexico, and the arms of the Gulf of Mexico, including all lands that are covered by the waters of the said Gulf and its arms, either at low tide or high tide, within the boundaries of Texas, as herein fixed; and that all of said lands are set apart and granted to the Permanent Public Free School Fund of the State, and shall be held for the benefit of the Public Free School Fund of this State according to the provisions of law governing the same.

"Sec. 4. That this Act shall never be construed as containing a relinquishment by the State of Texas of any dominion sovereignty, territory, property or rights that the State of Texas already had before the passage of this Act.

"Sec. 5. The fact that the land included within the boundaries hereinabove fixed belongs to the Permanent Public Free School Fund of this State, and that the same is believed to be oil bearing land, and that the development of same in accordance with the provisions of law governing the sale or lease of minerals belonging to said Permanent Free School Fund is a major duty of the Legislature, and requires prompt and immediate attention, creates an emergency and an imperative public necessity that the Constitutional Rule requiring all bills to be read on three several days in each House be, and the same is hereby suspended, and that this Act take eeffct and be in full force from and after its passage, and it is so enacted."

Approved May 16, 1941.

Act of May 23, 1947, L. Texas, 50th Leg., p. 451.

"Be it enacted by the Legislature of the State of Texas:

Section 1. That Section 1 of Senate Bill No. 130, Chapter 286, Act of the 47th Legislature, be and the same is hereby amended so as to hereafter read as follows:

'Section 1. The Gulfward boundary of the State of Texas is hereby fixed and declared to be a line beginning in the Gulf of Mexico at the mouth of the Sabine River; thence on a grid bearing S. 35 degrees 55 minutes and 22 seconds

E. to the farthermost edge of the continental shelf from the Gulf Shore line; thence in a Westerly and Southerly direction with the edge of the continental shelf to a point opposite the mouth of the Rio Grande River; thence to the mouth of the Rio Grand River.'

Sec. 2. The fact that the land included within the boundaries hereinabove fixed belongs to the Permanent Public Free School Fund of this state, and the state has never by statute embraced all of same within the boundary of Texas, and that the same is believed to be oil bearing land, and that the development of same in accordance with the provisions of law governing the sale or lease of minerals belonging to said Permanent Free School Fund is a major duty of the Legislature, and requires prompt and immediate attention, creates an emergency and an imperative public necessity that the Constitutional Rule requiring all bills to be read on three several days in each House be, and the same is hereby suspendd, and that this Act take effect and be in full force from and after its passage, and it is so enacted."

Approved May 23, 1947.

LOUISIANA.

Louisiana Revised Statutes 1950, Title 49, Sections 1 and 2:

"§ 1. Gulfward boundary.

The gulfward boundary of the state is a line located in the Gulf of Mexico parallel to the three-mile limit as determined according to international law, and is located twenty-four marine miles further out in the Gulf than the three-mile limit.

"§ 8. Sovereignty over waters within boundaries.

Subject to the right of the government of the United States to regulate foreign and interstate commerce under Section 8 of Article 1 of the Constitution of the United States, and to the power of the government of the United States over cases of admiralty and maritime jurisdiction under Section 2 of Article 3 of the Constitution of the United States, the State of Louisiana has full sovereignty over all of the waters of the Gulf of Mexico and of the arms of the Gulf

of Mexico within the boundaries of Louisiana, and over the beds and shores of the Gulf and all arms of the Gulf within the boundaries of Louisiana."

FLORIDA.

Constitution of State of Florida 1868—Article I.

"State boundaries.—The boundaries of the State of Florida shall be as follows. Commencing at the mouth of the river Perdido; from thence up the middle of said river to where it intersects the south boundary line of the State of Alabama, and the thirty-first degree of north latitude; thence due east to the Chattahoochee river; thence down the middle of said river to its confluence with the Flint river; thence straight to the head of the St. Mary's river; thence down the middle of said river to the Atlantic ocean; thence southeastwardly along the coast to the edge of the Gulf Stream; thence southwestwardly along the edge of the Gulf Stream and Florida Reefs to, and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from the land to a point west of the mouth of the Perdido river; thence to the place of beginning."

APPENDIX B.

The History of Article IV, Section 3, Clause 2 at the Constitutional Convention of 1787.

The original proposals with respect to the powers of Congress did not include any power to dispose of "property". Thus, it is of interest that no such power is referred to in Article I, Section 8, where the various powers of Congress are enumerated. Instead, the "property clause" appears in Article IV, Section 3, as a separate paragraph immediately following the paragraph relating to the manner in which new States are to be admitted into the Union. Such discussion as there was of this subject at the Constitutional Convention seems to make it clear that:

1. The provision with respect to the admission of new States was directed primarily to the future admission of States located in the area then known as the Northwest Territory.

2. Some of the original thirteen states claimed parts of this territory, and there were conflicting claims both as to the rights of the United States vis-a-vis some of the individual States, and as to the rights of some of the individual States vis-a-vis one another.

3. To deal with this situation, it was proposed that a procedure be set up for admitting new States into the Union—and as a directly related corollary, it was proposed that the Congress be given power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States". Because of the then existing controversy over "who owned what", Article IV, Section 3 went on to provide that:

"Nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state."

* * *

In all probability, no one would seriously argue that the language of Article IV, Section 3, Clause 1, relating to the admission of new states to the Union, would authorize the Congress to admit a state which was wholly "at sea"—that is, a state which was wholly in the "tidelands". By show-

ing the interrelation between Clause 1 and Clause 2 of Article IV, Section 3, it becomes clear that the Constitutional Convention, in its references to "territory or other property belonging to the United States", had reference only to "territory or other property" of the same general type as that which the Founding Fathers had in mind in their provision respecting the admission of new states—that is, territory or property such as that which was located in the Northwest Territory.

The following passages from Farrand, the Records of the Federal Convention, bear on this matter:

In Volume II, at page 321, (The Journal of the Convention for Saturday, August 18, 1787) appears the first reference to the provision which is now Article IV, Section 3, Clause 2. (This passage reads as follows:

> "The following additional powers proposed to be vested in the legislature of the United States . . .

to dispose of the unappropriated lands of the United States.")

Later in August of 1787 this language was revised, and substantially the same language that now appears in Article IV, Section 3, Clause 2 was first presented to the Constitutional Convention on August 30, 1787. This appears in Farrand, Volume II, at page 458, as follows:

> "It was moved and seconded to agree to the following proposition: 'Nothing in this Constitution shall be construed to alter the claims of the United States or of the individual States to the Western territory . . .'
>
> "It was then moved and seconded to postpone the last proposition to take up the following: 'The legislature shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States: and nothing in this Constitution contained shall be so construed as to prejudice any claims either of the United States or of any particular State.' "

This language was adopted by the Convention on August 30. Farrand, Volume II, page 459.

A general discussion of this provision, both in terms of the admission of the new States and in terms of the "the right of the United States to back lands", took place on

August 30. See Madison's Journal, Farrand, Volume II, page 466. (Maryland was the only state that opposed Article IV, Section 3—its opposition being based on its own claim with respect to the western lands). See McHenry's Notes, Farrand, Volume II, page 470.

The Committee of Style, in its revision of the language of the Constitution, left the language quoted above intact. (This language was Article XVII of the draft of the Constitution, at that time. See Farrand, Volume II, page 578).

From other material which appears in the various appendices to Farrand, it appears that the language of Article IV, Section 3, was drafted by Gouveneur Morris. See his letter of December 4, 1803, to Henry W. Livingston, as quoted in Farrand, Volume III, page 404, where, addressing himself to the admission of new States to the Union, in response to an inquiry from Livingston, he said:

> "Your inquiry . . . is substantially whether Congress can admit, as a new State, territory which did not belong to the United States when the Constitution was made. In my opinion, they can not. I always thought that, when we should acquire Canada and Louisiana, it would be proper to govern them as provinces . . . . In wording the third section of the fourth Article I went as far as circumstances would permit to establish the exclusion."

APPENDIX C.

The History of Article IV, Section 3, Clause 2, and Related Matters, at the Virginia Convention of 1788—the Convention which Ratified the Federal Constitution.

At the Virginia Convention, which was held in 1788, just a few months after the Constitutional Convention in Philadelphia had completed its work, there were present some of the best thinkers in any of the thirteen States. Among the leaders were John Marshall, later to be Chief Justice of the United States; James Madison, the father of the Constitution; Governor Randolph of Virginia; Patrick Henry; and many others. For a general discussion of the high level of the debate at this Convention, see Beveridge's *Life of John Marshall*, Vol. 1, Chapters IX-XII. And see especially pages 322-3, where Beveridge makes the following categoric statement:

> "The debates in the Virginia Convention of 1788 are the only masterful discussions on *both* sides of the controversy [over whether or not to ratify the Constitution] that ever took place. . . . The Virginia contest was the only real *debate* over the whole Constitution."

Accordingly, statements that were made at the Virginia Convention of 1788 are extremely important, in terms of the "legislative history" of the Constitution—practically as important as, and in some cases even more important than, the statements that were made a few months earlier, in 1787, at the Constitutional Convention itself.

In addition, as already noted above, the Virginia Convention brought together many of the best thinkers of the time—James Madison, John Marshall, etc.—so what was said at the Virginia Convention takes on even greater significance. In this respect, the debates at the Virginia Convention can be compared in significance to the *Federalist* papers.

By fortunate circumstance, at the Virginia Convention there was an extensive discussion of possible "give-aways" of federal "prroperty". The specific matter under discussion was the possible "give-away", to Spain, of navigation rights on the Mississippi. Madison stated flatly that, under the Constitution, the Federal Government would have no power to effect such a give-away, even by a treaty bearing the concurrence of two-thirds of the Senate. Governor

Randolph said that such a give-away was specifically prohibited by Article IV, Section 3, clause 2, of the Constitution—and in this connection he quoted the final sentence of clause 2, which reads as follows:

> "Nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular state."

Governor Randolph said that the give-away of navigation rights on the Mississippi would prejudice a right of the State of Virginia, in direct violation of this provision of the Constitution.

It is this discussion that is reflected by the material that is set out in the attached pages. Particular mention should be made of the quotations from James Madison at pages 246 and 247 of the Journal of the Virginia Convention, the quotation from John Marshall at page 299, and the quotation from Governor Randolph at page 258, all of which are set out in detail below.

All page numbers are taken from the published stenographic transcript of the 1788 Convention, as compiled by a shorthand reporter by the name of Robertson. Elliott's *Debates*, which reprints much of this material, is not nearly as complete as Robertson. Robertson's notes, taken down in 1788, were printed in Virginia in 1805. (See Beveridge, *op. cit. supra*).

It is the material from Robertson's transcript, as referred to above, which is quoted and paraphrased in the pages that follow.

Robertson's complete transcript consists of approximately four hundred and eighty pages of verbatim and paraphrased debates at the Virginia Convention of June, 1788—a Convention which was called for the express purpose of ratifying or rejecting the Federal Constitution, as proposed at the Constitutional Convention held in Philadelphia in 1787.

At pages one through ten of the volume, there is set out the full text of the Constitution itself, with the signatures of all the signers.

At pages ten and eleven, over the signature of George Washington, President of the 1787 Convention, there is set out the Resolution with respect to the transmission of the Constitution to the thirteen states, for ratification or rejection by them, with the proviso that the Constitution shall take effect upon ratification by nine of the states.

At pages eleven and twelve, over the signature of George Washington, as President of the 1787 Convention, there is a letter transmitting the Constitution to the several states. Among other things, this letter of transmittal from George Washington states: "The friends of our country have long seen and desired, that the power of making war, peace and treaties, that of levying money and regulating commerce, and the correspondent executive and judicial authorities, should be fully and effectually vested in the general government of the Union . . ." (Journal of the Virginia Convention, page 11).

Following this letter from General Washington, the volume contains the debates of the Virginia Convention, which opened in the first week day of June, 1788. On the opening day it was agreed "that the rules and orders for conducting business in the House of Delegates, so far as the same may be applicable to the Convention, be observed therein." (Page 15).

It was then proposed by Mr. George Mason, and concurred in by Mr. Madison, that the Constitution should be reviewed by the Convention, "Clause by clause" (Page 15).

Mr. Mason offered a specific resolution to this effect, as follows: "That no question, general or particular, shall be propounded in this Convention, upon the proposed Constitution of Government for the United States, or upon any clause or article thereof, until the said Constitution shall have been discussed, clause by clause, through all its parts."

This Resolution "was agreed to by the Convention, unanimously." (Page 15).

The following day, June 4, 1788, the Convention began to address itself to substantive matters. The discussion of Article I, Sections One and Two, begins in the Journal at page 18, and continues at great length. The subsequent articles and sections are then taken up in the order that they bear in the Constitution itself—except that the very general discussion of Article I frequently included discussion of the other articles and sections.

With the foregoing as preamble, the specific excerpts of present interest are as follows:

Mr. John Marshall, at page 163: "Mr. Chairman—I conceive that the object of the discussion now before us, is, whether democracy, or despotism, be most eligible. I

am sure that those who frame the system submitted to our investigation, and those who now support it, intend the establishment and security of the former. . . . [Patrick Henry] told us, that the principal danger arose, from a government, which is [this Constitution be] adopted, would give away the Mississippi. I intended to proceed regularly, by appending to the clause under debate, but I must reply to some observations which were dealt upon [by Patrick Henry], to make impressions on our minds unfavorable to the plan upon the table. Have we no navigation in, or do we derive no benefit from, the Mississippi? How shall we attain it? By retaining that weak government which has hitherto kept it from us? Is it thus that we shall secure that navigation? Give the government the power of retaining it, and then we may hope to derive actual advantages from it." These remarks by John Marshall were addressed to Patrick Henry's contentions that the Federal Government, if the Constitution were to be adopted, would be likely to give away navigation rights on the Mississippi to Spain. A proposal to this effect had been pending for some time, under the Articles of Confederation, and Patrick Henry and a number of the other delegates to the Convention expressed the view that a new Constitution would strengthen the hands of those who wished to give away these navigation rights to Spain. It is clear from the debates at the Virginia Convention that all of the delegates who spoke on this subject were opposed to giving away these navigation rights to Spain—and that there was a considerable volume of discussion on whether or not the Federal Government, if the Constitution were to be adopted, would have the power to give away these rights. The reason why this debate took place was as follows: Kentucky, which was not then a state, had 14 delegates at the Virginia Convention. It was known that the votes of these 14 delegates might well determine the outcome of the Convention. (The final vote, after three weeks of debate, was 89 for ratification, 79 opposed.) Accordingly, the highly emotional issue of the proposed give-away of navigation rights on the Mississippi was a central issue in the debates, because of its possible effect on the votes of the Kentuckians. See Beveridge, *op. cit. supra.*

John Marshall, at page 165, "The Senate, with the President, he [Patrick Henry] informs us, may make a treaty which shall be disadvantageous to us—and that if they be not good men, it will not be a good Constitution. I shall

ask the worthy member only, if the people at large, and they only, ought to make laws and treaties? Has any man this in contemplation? You cannot exercise the powers of government personally yourselves."

John Marshall, at page 166, "What are the objects of the National Government? To protect the United States, and to promote the general welfare. Protection in time of war is one of its principal objects. Until mankind shall cease to have ambition and avarice, wars will arise. The prosperity and happiness of the people depend on the performance of these great and important duties of the general government. Can these duties be performed by one state? Can one state protect us, and promote our happiness? The honorable gentleman who has gone before me [Governor Randolph] has shown that Virginia cannot do those things. How can they be done? By the National Government only."

Mr. James Madison, at pages 188-9: "The powers of the General Government relate to external objects, and are but few . . . . Let us observe also, that the powers in the General Government are those which will be exercised mostly in time of war, while those of the state governments will be exercised in time of peace. . . . All agree that the General Government ought to have power for the regulation of commerce. . . . When general powers will be vested in the General Government, there will be after that mutability which is seen in the legislation of the states.

Mr. George Mason at page 195 (in connection with a general discussion of the possible grant to Spain of navigation rights on the Mississippi, from which flowed some reference to navigation rights on the "Potowmack") "Maryland, says the gentleman, has a right to the navigation of the Potowmack. This is a right which she never exercised. Maryland was pleased with what she had in return for a right which she never exercised. Every ship which comes within the State of Maryland, except some small boats, must come within our country [i.e., Virginia] . . . the back lands, he says [i.e., Governor Randolph says] is another source of danger. Another day will show, that if that Constitution is adopted without amendments, there are twenty thousand families of good citizens in the northwest District, between the Allegany mountains and the Blue Ridge, who will run the risk of being driven from their lands. They will be ousted from them by the Indiana Company—by the survivors, although their rights and titles have been confirmed by the Assembly of our own State."

(With further reference to the navigation of the Mississippi)—Mr. Lee of Westmoreland, at page 238—"Mr. Lee of Westmoreland, then in a short speech related several Congressional transactions respecting that river, and strongly asserted, that it was the unflexible and determined resolution of Congress never to give it up. That the Secretary of Foreign Affairs, who was authorized to form a treaty with Gardoqui, the Spanish Ambassador, had positive directions not to attempt to give up that navigation, and that it never had been their intention or wish to relinquish it. That on the contrary, they earnestly wished to adopt the best possible plan of securing it. After some desultory conversation, Mr. Monroe spoke as follows: "Mr. Chairman—my conduct respecting the transactions of Congress, upon this interesting subject, since my return to the States, has been well known to many worthy gentlemen here. . . . The policy of this State respecting this river has always been the same. It has contemplated but one object, the opening it for the use of the inhabitants, whose interests depended on it . . . If I recollect aright at this moment, the Minister of the United States at the Court of Madrid [during the war] informed Congress of the difficulty he found in prevailing upon that Court to acknowledge our independence, or take any measure in our favor, suggested the jealousy with which it viewed our settlements in the western country, and the probability of better success, provided we would cede the navigation of this river, as the consideration. . . . A resolution passed [the Congress during the war] to that effect . . . But what was the issue of this proposition? Was any treaty made with Spain that obtained an acknowledgement of our independence, although at war with Great Britain, and such acknowledgment would have cost her nothing? . . . So soon as the war ended, this resolution was rescinded. The power to make such a treaty was revoked. . . . After the peace, it became the business of Congress to investigate the relation of these states to the different powers of the earth, in a more extensive view than they had hiterto done, and particularly in the commercial line; and to make arrangements for entering into treaties with them on such terms as might be mutually beneficial for each party. As the result of the deliberations of that day, it was resolved, 'That commercial treaties be formed, if possible, with said powers, those of Europe in particular, Spain included, upon similar prin-

ciples, and three commissioners, Mr. Adams, Mr. Franklin, and Mr. Jefferson, be appointed for that purpose.' So that an arrangement for a treaty of commerce with Spain had already been taken. Whilst these powers were in force, a representative from Spain arrived, authorized to treat with the United States, on the interfering claims of the two nations, respecting the Mississippi, and the boundaries and other concerns wherein they were respectively interested. A similar commission was given to the Honorable the Secretary of Foreign Affairs, on the part of the United States, with these ultimata, 'that he enter into no treaty, contract, or convention whatever, with the said representative of Spain, which did not stipulate our right to the navigation of the Mississippi, and the boundaries as estalbished in our treaty with Great Britain.'—and thus the late negotiation commenced, and under auspices, as I supposed, very favorable to the wishes of the United States; for Spain had become sensible of the propriety of cultivating the friendship of these States. Knowing our claim to the navigation of this river, she had sent a minister hither principally to treat on that point."

James Monroe, at page 241—still discussing the proposed treaty with Spain—"By the articles of Confederation, nine states are necessary to enter into treaties. The instruction [to the Secretary of Foreign Affairs] is the foundation of the treaty . . . the instructions under which our commercial treaties have been made were carried by nine states. Those under which the Secretary now acted were passed by nine states. . . . The Secretary, Mr. Jay, being at length called before Congress to explain the difficulties [encountered in his negotiations with Spain] presented to their view the project of a treaty of commerce, containing, as he supposed, advantageous stipulations in our favor, in that line; in consideration for which we were to contract or forbear the use of the navigation of the River Mississippi for the term of twenty-five or thirty years, and earnestly advised our adopting it. . . . The Honorable Secretary urged that it was necessary to stand well with Spain; that the commercial project was a beneficial one, and should not be neglected; that a stipulation to forbear the use contained an acknowledgment, on her part, of the right in the United States; that we were in no condition to take the river, and therefore gave nothing for it. . . . We differed with the Honorable Secretary, almost in every respect. We admitted indeed the propriety of

standing well with Spain, but supposed we might accomplish that end at least on equal terms. We considered the stipulation to forbear the use, as a species of barter, that should never be countenanced in the council of the American States, since it might tend to the destruction of the society itself; for a forbearance of the use of one river, might lead into more extensive consequences—to that of the Chesapeake, the Potowmack, or any other of the rivers that emptied into it."

Mr. James Madison, at page 246: "I readily confess that neither the old confederation, nor the new Constitution, involves a right to give the navigation of the Mississippi. It is repugnant to the law of nations. I have always thought and said so. Although the right be denied, there may be emergencies which will make it necessary to make a sacrifice. But there is a material difference between emergencies of safety in time of war, and those which may relate to mere commercial regulations. You might on solid grounds deny in time of peace, what you give up in time of war."

Mr. James Madison, at page 247: "There were seven states who thought it right to give up the navigation of the Mississippi for twenty-five years . . . but they had no idea of absolutely alienating it. . . . The temporary cession, it was supposed, would fix the permanent right in our favor, and prevent that dangerous coalition [between Great Britain and Spain, which was regarded as a possibility at the time]".

Mr. James Madison, at page 247—still discussing the proposed cession of navigation rights on the Mississippi—"New Jersey . . . gave instructions to her delegates to oppose it. And what was the ground of this? I do not know the extent and particular reasons of her instructions. *But I recollect, that a material consideration was, that the cession of that river would diminish the value of the western country, which was a common fund for the United States,* and would consequently tend to impoverish their public treasury. These, Sir, were rational grounds." (Emphasis added). (In this general connection, it should be noted that all of the speakers took it for granted that the proposed cession, even though it was only for a term of years, could be accomplished, if at all, only by the treaty process—which, under the Articles of Confederation, required the approval of nine of the states. The discussion

also makes it clear that all persons who took part in the discussion, both those who favored the Constitution and those who opposed it, recognized that the proposed cession of navigation rights on the Mississippi could only take place, under the Constitution, via the treaty route—which would require the concurrence of the President and two-thirds of the Senate, under the Constitution itself.)

James Madison, at page 247: "Give me leave, Sir, as I am upon this subject, and as the honorable gentleman has raised a question, whether it be not more secure under the old than the new Constitution—to differ from him. I shall enter into the reasoning, which, in my mind, renders it more secure under the new system—two-thirds of the Senators present, (which will be nine states, if all attend to their duties) and the President must concur in every treaty which can be made. Here are two distinct and independent branches, which must agree to every treaty. . . . I own that as far as I have any rights, which are but trivial, I would rather trust them to the new than the old government."

Mr. Grayson, at page 249: "With respect to the Mississippi and back lands, the eastern states are willing to relinquish their great and essential right . . . But, says the honorable gentleman [Madison], there is a great difference between actually giving it up altogether, and a temporary cession.—[But the practical question is:] If the right was given up for twenty-five years, would this country be able to avail herself of her right, and resume it at the expiration of that period? . . . We never could wrest it [back] from the House of Bourbon, the branches of which always support each other."

Mr. Grayson, at page 250: "But we are told . . . that this high act of authority (i.e., the proposed give-away to Spain of navigation rights on the Mississippi) cannot, by the law of nations, be warrantable, and that this great right cannot be given up.—I think so also.—But how will the doctrine play to America?—After it is actually given away, can it be reclaimed? If nine states give it away, what will the Kentucky people do? . . . Should Congress make a treaty to yield the Mississippi, that people [i.e., the Kentucky people] will find no redress in the law of nations."

Governor Randolph of Virginia, at page 257—"That the people of Kentucky have an unequivocal right to the navigation of the Mississippi, by the law of nature and nations,

is clear and undoub[redacted] . . . [but] there was a dispute respecting the right o[redacted]reat Britain to that river, and the United States can only have the same right which the original possessor had from whom it was transferred. [However] I am willing to declare that the right is complete . . . [But] upon the most liberal interpretation, it [the treaty of peace with Great Britain] would never give the inhabitants a right to pass through the middle of New Orleans . . . [The real question is] whether the power of treaties be improper to be given or not to the General Government . . . It will moreover be contrary to the law of nations to relinquish territorial rights. To make a treaty to alienate any part of the United States, will amount to a declaration of war against the inhabitants of the alienated part . . . Are not the states interested in the back lands, as has been repeatedly observed?"

(This next quotation is probably the most important of the lot)

Governor Randolph of Virginia, at page 258: "The gentleman wishes us to show him a clause which shall preclude Congress from giving away this right. It is first incumbent upon him to show where the right is given up. There is a prohibition naturally resulting from the nature of things, it being contradictory and repugnant to reason, and the law of nature and nations, to yield the most valuable right of a community, for the exclusive benefit of one particular part. But there is an expression which clearly precludes the General Government from ceding the navigation of this river. In the 2d clause of the 3d section of the 4th Article, Congress is empowered "to dispose of, and make all *needful* rules and regulations respecting the *territory* or *other property* belonging to the United States." But it goes on and provides, that "*nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.*" Is this a claim of the particular State of Virginia? If it be, there is no authority in this Constitution to prejudice it." (Emphasis in original).

Governor Randolph, at page 248: "But it has been said, that there is no restriction with respect to making treaties. The various contingencies which may form the object of treaties, are in the nature of things, incapable of definition. The government ought to have a power to provide every contingency. The territorial rights of the states are sufficiently guarded by the provision just recited."

Governor Randolph of Virginia, still discussing this subject at page 259, commented on the fact that the right of navigation on the Mississippi was discussed at great length because delegates from Kentucky were present at the Convention, and the various arguments and counterarguments that were being made concerning the Mississippi constituted, in Governor Randolph's words, a "scuffle" for the votes and good will of these delegates.

Governor Randolph, at page 259: "I contend that *there is no power given the General Government, to surrender that navigation.* There is a positive prohibition in the words [of Article 4, clause 2, Section 3] I have just mentioned." (Emphasis added).

John Marshall, at page 299: "What government is able to protect you in time of war? Will any state depend on its own exertions? The consequence of such dependence and withholding this power (to raise and support armies, provide for the common defense, etc.) from Congress will be, that state will fall after state, and be a sacrifice to the want of power in the General Government.) *United we are strong, divided we fall.*" (Emphasis in original).

Discussion of Article 4, Section 2, on the admission of new states, at page 418: Mr. Grayson—"Mr. Chairman—it appears to me, Sir, under this section, there never can be a southern state admitted into the Union. There are seven states, who are a majority, and whose interest is to prevent it: the balance being actually in their possession, they will have the regulation of commerce, and the Federal ten-mile square wherever they please. It is not to be supposed then, that they will admit any southern state into the Union, so as to lose that majority. Mr. Madison replied, that he thought this part of the plan more favorable to the southern states than the present Confederation, as there was a greater chance of new states being admited."

Mr. Grayson—"Mr. Chairman—Gentlemen have misrepresented what I said on the subject of treaties. On this ground, let us appeal to the law of nations. How does it stand? Thus—that without the consent of the National Legislature dismemberment cannot be made. This is a subject in which Virginia is deeply interested, and ought to be well understood. It ought to be expressly provided, that no dismemberment should take place without the consent of the Legislature . . . How is it with Virginia. . . she will pay more than her natural proportion, and the

present state of the national debt renders it an object. She will also lose her importance. She is now put in the same situation as a state forty times smaller. Does she gain any advantage from her central situation, by acceding to that paper? Within ten miles of Alexandria, the center of the States is said to be. It has not said, that the ten-mile square will be there. In a monarchy the seat of government must be where the monarch pleases. How ought it to be in a republic like ours? . . . I lay it down as a political right, that the seat of government ought to be fixed by the Constitution, so as to suit public convenience. Has Virginia any gain from her riches and commerce? What does she get in return? I can see what she gives up, which is immense. The little states gain in proportion as we lose."

Mr. Madison, at page 444: "It was said, and I believe with truth, that every part of America does not stand in equal need of security. It was observed, that the northern states were most competent to their own safety. Was it reasonable, as today, that they should bind themselves to the defense of the southern states; and still be left at the mercy of the minority for commercial advantages? (Madison then recites the various arguments made by those who opposed the Constitution, and some of the arguments of those who had opposed the Articles of Confederation as well). The case of Maryland, instanced by the gentleman, does not hold. She would not agree to confederate, because the other states would not assent to her claims on the western lands. Was she gratified? No—she put herself like the rest. Nor has she since been gratified. The lands are in the common stock of the Union."

Finally, after all of the discussion referred to above and much more besides, the "main question" was put to the Convention—that is, whether or not the Convention "do agree" with the Constitution—the vote was eighty-nine ayes, and seventy-nine noes. Among those voting aye were: The Honorable Edmund Pendleton, President of the Convention: James Taylor; William Mason; His Excellency Governor Randolph; John Marshall; Robert Breckenridge; James Webb; James Taylor (of Norfolk); James Taylor (of Carolina); James Madison; Henry Lee (of Westmoreland); Bushrod Washington, and a number of others.